

404(b) instruction—Deft not testifying and 404(b) evidence is a prior conviction

INSTRUCTION NO. ____

Evidence has been presented that the defendant was previously convicted of a crime. You may consider that evidence for relevant purposes such as _____. [Judge to specify]. However, you must not simply conclude from that evidence that the defendant is guilty of the crime(s) charged because (he)(she) is a “bad person.”

Readability: 10.22

Note: The judge should identify the specific purpose(s) for which the 404(b) evidence has been offered. The Committee recommends against merely listing all the purposes authorized under the Rule.

The list of proper non-character purposes under Rule 404(b) is illustrative and not exhaustive. The Committee recommends that this instruction be tailored to identify the specific purpose(s) for which the 404(b) evidence has been received, rather than merely listing the various purposes expressly referenced under the Rule.

Rule 404(b) evidence is admissible when relevant to prove any material fact, except criminal disposition as the basis for an inference that the defendant committed the crime charged. *State v. Forsyth*, 641 P.2d 1172 (Utah 1982).